

BEFORE THE COMMISSIONER OF INSURANCE
STATE OF COLORADO

Order No. O-12-020

FINAL AGENCY ORDER

IN THE MATTER OF THE REQUEST BY COPIC INSURANCE FOR SUSPENSION
OR MODIFICATION UNDER SECTION 26 OF THE COLORADO INSURANCE
REGULATION 4-4-1, CONCERNING LONG-TERM CARE INSURANCE

Respondent.

THIS MATTER comes before Jim Riesberg, Commissioner of Insurance for the State of Colorado ("Commissioner") on COPIC Insurance Company's August 2, 2011 Request for Suspension or Modification Under Section 26 of the Colorado Insurance Regulation 4-4-1, Concerning Long-Term Care Insurance ("Section 26 Request").

The Commissioner has fully considered and reviewed the Section 26 Request and being fully advised in the premises the Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times the Respondent has been licensed by the Colorado Division of Insurance ("Division") to write Accident and Health; General Casualty; and Medical Malpractice insurance.
2. The Commissioner has jurisdiction over this matter pursuant to § § 10-1-109(1), 10-16-106 and 10-3-1110(1), C.R.S.
3. On August 2, 2011 COPIC Insurance Company ("COPIC") filed with the Division, via SERFF, its Section 26 Request.
4. Section 26 of Colorado Insurance Regulation 4-4-1 permits the Commissioner, upon written request and after an administrative hearing, to issue an order to modify or suspend requirements of Regulation 4-4-1 upon a written finding that the following three criteria are met:
 - a. The modification or suspension would be in the best interest of the insureds;
 - b. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

- c. In determining if it is reasonable to order a modification or suspension of a specific provision(s) of this regulation, the Commissioner will consider if:
 - i. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or
 - ii. The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or
 - iii. The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.
- 5. In its Section 26 Request, COPIC requests suspension or modification to part or all of Sections 7, 9, 13, 14, 20, 21, 22, 24 and 25 of Colorado Insurance Regulation 4-4-1.
- 6. COPIC and the Division have entered into an Agreement captioned "Agreement Between the Colorado Division of Insurance and COPIC Insurance Company" ("Agreement"), dated August 4, 2011, wherein COIC has waived its right to an administrative hearing under Section 26 of Division Regulation 4-4-1 and seeks an Order directly from the Commissioner. COPIC concurs said Order shall become a final decision of the Commissioner.
- 7. Effective June 6, 2011 COPIC and the Division entered into a Memorandum of Understanding ("MOU"), wherein the parties anticipate and contemplate that as of January 1, 2012, COPIC will no longer offer new long-term care insurance certificates to individual physicians covered under COPIC's professional liability insurance.
- 8. The MOU anticipates that as of January 1, 2012, COPIC's long-term care insurance business will consist solely of:
 - a. Renewing and administering long-term care insurance held by the physician insureds, and their spouses, if applicable, who are covered by the COPIC long-term care group master policy as of December 31, 2011, and who choose to continue their long-term care insurance ("Grandfathered Group"); and
 - b. Offering and administering long-term care insurance to all COPIC employees on a universal, company-paid basis under the COPIC long-term care group master policy, as well as to the former employees who choose to continue their coverage.

9. In light of the foregoing, and in anticipation that the parties will reach the settlement contemplated in the MOU, the Commissioner finds that
- a. The requested modification or suspension would be in the best interest of COPIC's insureds.
 - b. The settlement contemplated in the MOU could not be effectively or efficiently achieved without the modification or suspensions requested; and
 - c. The modification or suspensions are necessary to achieving the settlement contemplated in the MOU, which will result in the development of an innovative and reasonable approach for insuring long-term care.

CONCLUSIONS OF LAW AND ORDER

10. COPIC seeks modification of Section 7.A, as it applies to COPIC's employee LTC insureds, and requests that the Division recognize COPIC's long-term care policy as subject to 7.A.2, as opposed to 7.A.1. Section 7.A.1 requires that no long-term care policy or certificate be issued until the insurer has received either (1) a written designation of at least one person, other than the applicant, who is to receive notice of lapse or termination of the policy or (2) a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.
11. In the alternative, Section 7.A.2 provides that when the certificate holder pays the premium for a long-term care insurance policy through a payroll or pension deduction plan, the requirements in Section 7.A.1 need not be met until sixty (60) days after the certificate holder is no longer on such a payment plan.
12. COPIC shall be permitted a modification to Section 7.A. COPIC's employee LTC insured shall be subject to provision 7.A.2 and shall not be subject to provision 7.A.1. The Commissioner finds COPIC's employees are more similar to a certificate holder who pays for long-term care through a payroll or pension deduction plan, since COPIC employees are not required to pay for their long-term care coverage. The Commissioner further finds there is no risk of lapse until the employee goes to a direct-bill system, at which point COPIC shall be required to obtain the necessary designation or waiver within the sixty (60) days, as is required by Section 7.A.2.
13. COPIC seeks partial suspension of Section 9.D, the personal financial worksheets and disclosures in Appendix B and the contingent non-forfeiture section of Appendix F.

14. Section 9.D of Regulation 4-4-1 states that “[a]n insurer shall use the forms in Appendices B and F to comply with the requirements of Subsections B & C of this section.”
15. The portions of Appendices B and F relevant to Section 9 are primarily related to potential rate increases. Because COPIC pays its employees’ long-term care insurance premiums and because coverage is universal, the disclosures at Appendices B and F are not necessary.
16. The Commissioner finds that COPIC shall be permitted to dispense with providing Appendices B and F to its employee’s at the time coverage is provided. The Commissioner further finds that at the time of separation, COPIC employees will need to determine whether to continue to pay for their own continued coverage. Therefore, COPIC shall deliver the applicable potential rate increase disclosures set forth in Appendices B and F to its employees who separate from COPIC, within sixty days of the employee’s separation and at least thirty days prior to any premium being due directly from the former employee.
17. While not explicitly applicable to Section 9, Appendix B includes a solicitation of an applicant’s personal financial information concerning income, savings and investments. These worksheets are primarily designed to help an applicant for LTC insurance decide whether to purchase the policy.
18. COPIC’s employees receive LTC coverage, without cost to the employee, unless or until the employee leaves COPIC’s employment. Thus, the Commissioner finds COPIC shall not be required to solicit such personal financial information concerning income, savings and investments from its employees who receive LTC coverage.
19. The MOU contemplates that as of January 1, 2012, COPIC will only be issuing new certificates to its employees. Thus, the section of Appendix F that relates to Contingent Nonforfeiture will not be required as a part of COPIC’s Long-Term Care Insurance Potential Rate Increase Disclosure Form. C.R.S. § 10-19-113.4 provides that the contingent non-forfeiture benefit option is to be presented to the policyholder unless the group is a § 10-19-103(4)(d) group. For COPIC’s employee group, COPIC as the policyholder and as the entity that pays the premiums for its employee insureds has opted not to pursue the nonforfeiture benefit. Because COPIC is not pursuing this option, the contingent nonforfeiture disclosure will not be included in COPIC’s Long-Term Care Insurance Potential Rate Increase Disclosure Form.
20. COPIC seeks suspension of Section 13 in its entirety, including the notice forms provided in Appendices H and I. The regulations in Section 13 relate to application forms and mandate certain questions on such forms. The questions are primarily designed to elicit information about existing LTC coverage that might be replaced by new LTC coverage that an applicant is seeking. This

information facilitates reporting requirements designed, in part, to identify sharp sales tactics, which may pressure applicants in the open market to replace or supplement existing coverage. COPIC's employees, however, do not apply for long-term care insurance, and COPIC's LTC product is not marketed to the public. Therefore, the Commissioner suspends the requirement of Section 13 as it applies to COPIC employees, so long as COPIC does not engage in any marketing of its long-term care insurance product.


21. COPIC seeks suspension of Section 14 in its entirety, including the reporting forms in Appendices E and G. Section 14 requires insurers to maintain certain records regarding replacement sales and the percentage of lapsed policies, and to report annually to the Division regarding these records. These regulations are primarily designed to track replacement sales and lapsed policies as a percentage of sales. In part, this regulation assists the Division in identifying potential sharp or pressure sales tactics. COPIC's LTC policy is not offered to the general public and will not be "sold" to its employees, but will instead be provided to COPIC employees at no cost. The Commissioner finds COPIC has no annual "sales" to report and that COPIC policies will only lapse after an individual leaves COPIC employment and determines not to personally pay the associated LTC premiums. Therefore, the Commissioner suspends the requirement of Section 14 as it applies to COPIC employees, so long as COPIC does not offer of its long-term care insurance product to the general public and limits its long-term care product to the insured individuals set forth in paragraph 8 above.
22. COPIC seeks suspension of Section 20 in its entirety or a recognition that this Section does not apply to COPIC's activities. The regulations in Section 20 require the Commissioner's review and approval of all advertising for long-term care insurance, to the extent required under state law. These regulations are primarily designed to permit the Division's review of advertisements to the potential purchasers of LTC coverage. COPIC does not advertise its LTC insurance benefit to the general public. Therefore, the Commissioner suspends the requirement of Section 20, so long as COPIC does not engage in any advertising of its long-term care insurance product.
23. COPIC seeks suspension of Section 21 in its entirety or a recognition that this Section does not apply to COPIC. Section 21 applies to every insurer "marketing long-term care insurance" in Colorado. Section 21 is intended to apply to insurers who market long-term care insurance and is primarily designed to prevent deceptive and unfair trade practices through marketing. COPIC does not market its LTC policy to the general public. Therefore, the Commissioner suspends the requirements of Section 21, so long as COPIC does not engage in any marketing of its long-term care insurance product.
24. COPIC seeks suspension of Section 22 in its entirety including the personal worksheets and related documents attached as Appendices B, C, and D. The provisions in Section 22 relate to suitability standards. Section 22 applies to

insurers who market long-term care insurance and is primarily intended to protect the public from overreaching by selling individuals unsuitable coverage at high premiums. COPIC does not market its long-term care product and thus the elicitation of suitability information is not applicable to COPIC's LTC product. The benefit amount provided by COPIC is uniform, and is not modified based on a particular individual's circumstances. Therefore, the Commissioner suspends the requirements of Section 22, so long as COPIC does not engage in any marketing of its long-term care insurance product.

25. COPIC seeks either suspension of Section 24 in its entirety, including the Outline of Coverage attached as Appendix J, or a recognition that COPIC, as a § 10-19-103(4)(a) group, satisfies the requirements of this Section. Section 24 implements the provisions of C.R.S. § 10-19-112 in prescribing a standard format and the content to be set forth in an Outline of Coverage. C.R.S. § 10-19-112 does not require an Outline of Coverage to be delivered to a C.R.S. § 10-19-103(4)(a) group provided the related information is otherwise provided in enrollment materials. The Commissioner finds COPIC employees are a C.R.S. § 10-19-103(4)(a) group and therefore satisfy the requirements of Section 24.
26. COPIC seeks suspension of Section 25 in its entirety. Section 25 requires insurance companies to provide a "Shopper's Guide" to prospective applicants for long-term care insurance. This regulation is primarily designed to provide prospective buyers of individual insurance policies with sufficient information to make benefit and price comparisons. The MOU contemplates COPIC's group policy being limited to the insured individuals as defined in paragraph 8(1) and 8(2) above. COPIC pays one hundred percent of the premiums on behalf of its individual members while they remain COPIC employees, which eliminates the need for price comparison.
27. The Commissioner therefore finds the rationale for providing the Shopper's Guide does not apply to COPIC's group policy as contemplated by the MOU, as the policy will not be offered to the general public. Therefore, the Commissioner suspends the requirements of Section 25, so long as COPIC does not engage in any marketing of its long-term care insurance product and for so long as the product is not provided to any party outside of the insured individuals described in paragraphs 8(1) and 8(2) above. In the event that COPIC modifies its process for continuation coverage such that new enrollment and a corresponding application is required from the former employee upon his or her election to continue coverage, COPIC shall timely provide the former employee with a Shopper's Guide properly filed with the Division.
28. In the event the parties do not reach the settlement contemplated by the MOU, the within suspensions and/or modifications shall be subject to further review and consideration by the Commissioner, at which time, the Commissioner could enter

further Orders consistent with the status of COPIC's long-term care product at the time such Orders are entered.

WHEREFORE: It is hereby ordered that the findings of fact and conclusions of law contained in this Final Agency Order are hereby adopted and filed and made an official record of this office this 4th day of August, 2011.



Jim Riesberg
Commissioner of Insurance


CERTIFICATE OF MAILING

I hereby certify that on the 14 day of August, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-12-020**, IN THE MATTER OF THE REQUEST BY COPIC INSURANCE FOR SUSPENSION OR MODIFICATION UNDER SECTION 26 OF THE COLORADO INSURANCE REGULATION 4-4-1, CONCERNING LONG-TERM CARE INSURANCE, in the United States Mail via certified mailing with postage affixed and addressed to:

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